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SUMMARY RECORD OF THE 29th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 17 February 1994, at 7 p.m.

Chairman: Mr. URRUTIA (Peru)

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The meeting was called to order at 7.15 p.m.

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

(a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(b) STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(c) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES

(d) QUESTION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(agenda item 10) (continued) (E/CN.4/1994/24, 25 and Add.1, 26 and Corr.1 and Add.1, 27, 28, 29 and Add.1, 30, 31, 32, 33, 88 and Corr.1, 93 and Corr.1, and 103; E/CN.4/1994/NGO/5, 8, 10, 11, 18, 19, 21 and 25; E/CN.4/1994/Sub.2/1993/8, 9, 23/Rev.1, 24 and Add.1 and 2, and 25; E/CN.4/Sub.2/1992/10; A/48/520 and 579)

1. Mr. CHANGALA (Service, Peace and Justice in Latin America) noted with dismay that arbitrary detention, enforced disappearances and torture, as well as cruel, inhuman or degrading treatment in general, were current practices in many countries and, in particular, although to differing degrees, in all the countries of Latin America. In Colombia, for example, torture had become a systematic tool of repression associated with the armed conflict, with the political violence in the country and with the practice of "social cleansing" in the main towns. Between January and September 1993, 426 persons had died as a result of torture, a figure representing 25 per cent of total deaths for political or assumed political reasons. In his latest report (E/CN.4/1994/31), the Special Rapporteur on torture noted that 17 cases of torture had been attributed to agents of the State and drew attention to the failure of the Colombian Government to respond to his requests for information about the cases reported in 1992 and 1993. The Special Rapporteur stated that he was awaiting further details of the measures which the Government was planning to take to tackle an apparently endemic problem, in particular in the conflict zones. Service, Peace and Justice in Latin America was therefore firmly in favour of the drafting of an optional protocol to the Convention against Torture and in particular, of the establishment of a body to make periodic inspections of all places of detention. It therefore requested the Commission to renew the mandate of the Working Group preparing the draft text.

2. Arbitrary detention was also very widespread in Latin America. For example, on 18 and 21 December 1993, members of the armed forces had arrested 30 persons accused without evidence of belonging to the FARC guerrilla forces and had made them confess their guilt under torture. It was to be hoped that the Working Group on Arbitrary Detention would have its mandate renewed and would thus be able to continue to denounce that kind of situation, which was often associated with the unjustified declaration of a state of emergency. It

could only be regretted that some Governments were not collaborating with the Working Group by providing it with the information which it needed in order to do its work properly.

3. All those problems were aggravated by the fact that the persons responsible for such violations of human rights enjoyed almost complete impunity. Impunity had no place in a social system which claimed to be democratic. For example, Captain Fausto Morales Villota, who had been accused by the Public Prosecutor of the 1985 murder of Consuelo Benavidez, had been discharged following his trial by a military court in 1987 and had not only been retained in his post, but was even going to be promoted shortly to a higher grade. Impunity constituted a direct attack on the principles of the equality of citizens before the law and of the separation of powers, the very foundations of democracy; it was also an obstacle to the quest for the truth and the award of appropriate compensation to the victims of violations. Service, Peace and Justice in Latin America therefore welcomed the interim report on the question (E/CN.4/Sub.2/1993/6) by two experts of the Sub-Commission and hoped that they would continue their work not only in the framework of a new study now concentrating on economic, social and cultural rights, but also with a view to the drafting of an instrument setting forth all the principles recognized by the international community in the area in question.

4. Ms. WHITTOM (Lawyers Committee for Human Rights) said that the Lawyers Committee for Human Rights was concerned about the failure of some States to demonstrate respect, under all circumstances, for international standards guaranteeing the independence and impartiality of judges and lawyers, the right to a fair trial, the right of access to counsel and the right of detainees not to be subjected to torture.

5. In Kosovo, which had been under direct Serbian control since 1990, ethnic Albanian lawyers charged with crimes had been denied due process. Furthermore, 200 Albanian judges and lawyers had been removed from their posts and Serbian had become the official language of the courts. The Kosovo Bar Association had also been disbanded. In November 1993, a Serbian-appointed court had upheld the sentences of five and six years' imprisonment, respectively, imposed a year earlier on two lawyers, Fatlik Lila and Sokol Dobruna, whose trials had been marked by numerous irregularities, on a charge of association for the purpose of carrying out hostile activity and undermining the territorial integrity of Yugoslavia. The Lawyers Committee for Human Rights remained concerned about the general behaviour of the Serbian authorities in Kosovo and, in particular, about the fact that Serbian public-order legislation did not conform with the recognized international standards.

6. In Northern Ireland, the apparent lack of thoroughness in the police investigation into the 1989 murder of Patrick Finucane, one of the most prominent defence lawyers in Northern Ireland, and the unwillingness of the authorities to institute an independent public inquiry were further sources of concern. The United Kingdom Government had not responded to the appeals for such an inquiry, including the appeals made in August 1992 and August 1993 by Mrs. Palley, the United Kingdom expert in the Sub-Commission. Nor had any action been taken in the United Kingdom to ensure the protection of lawyers;

that was a matter of serious concern in view of the increase during 1993 of physical abuse and threats, including death threats, directed against defence lawyers in Northern Ireland.

7. In Peru as well, the administration of justice left much to be desired. The decrees issued by President Fujimori in 1992, which had led to the dismissal and replacement of many judges and prosecutors, were still in force despite the holding of national elections and the promulgation of a new Constitution. The status of many Peruvian judges remained provisional, so that the independence of the judiciary would continue to be compromised. In addition, the criminal justice system offered no guarantees for persons charged with terrorism or treason. The police had unfettered authority to arrest individuals and hold them incommunicado for extended periods. The prolonged periods of pre-trial detention were due to the fact that prosecutors and judges usually simply ratified police reports. Moreover, persons charged with treason were tried by military tribunals presided over by army officers and using inappropriate summary procedures.

8. In Tunisia, the few lawyers still willing to represent the Government's political opponents or members of banned organizations such as the Islamist movement An-Nahda or the Tunisian Communist Workers Party were subjected to threats and intimidation. For example, in December 1992 and April 1993, the defence lawyer Radhia Nasraoui and members of her family had been followed by police officers and had received anonymous threats. Other lawyers had been banned from travelling abroad or threatened with imprisonment because of their professional activities.

9. In Turkey, eight lawyers arrested in November and December 1993 in the south-east of the country and charged under article 168/2 of Turkey's Penal Code with aiding and abetting members of an illegal armed organization could face prison sentences of 10 to 15 years. Several of them were members of the Human Rights Association and had represented clients associated with the Kurdish Workers Party (PKK), on which the Turkish Government had declared total war in 1983. The persecution of lawyers in the south-east of Turkey was in fact designed to deprive their clients of their right to legal defence. The Lawyers Committee for Human Rights was also concerned about the reports that some of the eight imprisoned lawyers had been tortured during pre-trial detention.

10. In conclusion, the Lawyers Committee for Human Rights supported the recommendation of the Sub-Commission for the appointment of a special rapporteur to monitor the question of the independence and impartiality of judges and the legal profession. The cases which she had cited illustrated the need for such a monitoring mechanism.

11. Mr. WANG Zengduo (China) said that all the rights of detainees (right of appeal, right to legal defence, right not to be subjected to abuse) were expressly guaranteed by the relevant laws in force in China and permanent offices had been established to supervise the operation of those guarantees in all prisons and centres for rehabilitation through labour. In addition, members of the People's Congress and the people's political consultative conferences, as well as other representatives of organs for the supervision of law enforcement, regularly inspected the prisons and places of detention. In

accordance with the principle of rehabilitation through labour, all prisoners capable of working must work, under the supervision of the personnel of the competent organs; the work assigned to them was suited to their skills and general state of health.

12. Places of detention were regarded as special schools where prisoners received education in all subjects in order to help them to become law-abiding citizens. To that end, they were instructed in the provisions of the Chinese Constitution, the Penal Code, the Code of Penal Procedure and the Civil Code and they received civic education to teach them to have a correct attitude towards their fellows. They also received secondary-level education and vocational training, for which they could be awarded an officially recognized qualification enabling them to find work and improve their living conditions after release.

13. In addition to the competent organs, all other members of society could participate in various ways in the rehabilitation of prisoners. Representatives of various associations held meetings in prisons with a view to helping prisoners to solve some of their practical problems. Visits to construction projects were also arranged for prisoners. All such efforts were designed to enhance the prisoners' confidence in the rehabilitation process. The rewards and punishments were clearly defined in the legislation. Any prisoner could receive remission of his sentence or release on parole for good conduct. On the other hand, those who refused to be rehabilitated or who re-offended after release could have their sentences increased. The authorities helped prisoners to continue their studies and to work after their release and such efforts had been crowned with success, for the recidivism rate had never exceeded 8 per cent - much lower than the rate in many other countries. Many delegations from foreign countries which had visited Chinese prisons had moreover commended China in that respect.

14. The aim of the rehabilitation of prisoners through labour was to make them into law-abiding and independent citizens. Rehabilitation was an effective means of guaranteeing the exercise by prisoners of all their rights both during detention and after reintegration in society. As China advanced in its policy of reform and openness and as its economy developed, the conditions of the protection of the rights of prisoners would improve. It was to be hoped that the information just provided about the Chinese system of rehabilitation of prisoners through labour would dispel any misunderstanding on the subject among the States members of the Commission.

15. Mr. VAJPAYEE (India) said that, despite the existence of international standards designed to ensure respect for the inherent dignity of the human person, incidents of torture and cruel, inhuman or degrading treatment, as well as enforced or involuntary disappearances, continued to occur in various parts of the world. It was obvious, as indeed had been noted by the Working Group on Enforced or Involuntary Disappearances, the Working Group on Arbitrary Detention and the Special Rapporteur on torture, that impunity was perhaps the most important contributing factor in such phenomena. The international community must therefore establish the necessary mechanisms to put an end to them.

16. In India, such acts were promptly brought to the notice of the competent authorities. The right to life and personal freedom was a fundamental and inalienable right conferred on all citizens by the Indian Constitution. All the legal texts on the administration of justice contained detailed provisions for the protection of those rights and the right to due process. The judiciary enjoyed broad independence and all the actions of the State in the maintenance of public order, as well as decisions of courts martial, could be challenged and scrutinized by a civil court. A judicial inquiry was mandatory in the event of a death in custody and police officers had been punished in some instances. The Penal Code had also been amended to take account of a specific court decision concerning the rape of a woman by a police officer while she was in police custody. Henceforth, the burden would be on the accused to prove that he had not committed the alleged rape. Any individual or group could bring instances of violation of human rights before the high courts and the Supreme Court with a view to obtaining judicial remedy; furthermore, all judicial proceedings were open to the public and were routinely reported in the press and other media.

17. India's press provided an effective mechanism of deterrence against the commission of illegal acts by the law-enforcement agencies or any other public body. There were also large numbers of NGOs, human rights activists and civil liberties groups which highlighted issues of public interest relating to human rights. Institutions had also been created to safeguard the well-being and guarantee the rights of India's minorities and of all the weaker sections of society. The recent establishment of the National Human Rights Commission, whose main characteristics were independence and transparency, was evidence of the resolve of the Indian Government to act firmly to fill any gap between legislation and its practical implementation. Among other things, the Commission could make inquiries on request or on its own initiative into any complaint of violation of human rights or negligence by public servants in the prevention of such violations. Its powers were wide-ranging; in particular, it could visit prisons or any other places of detention.

18. Although democracy did not necessarily guarantee respect for human rights, it was the system best suited for that purpose because protection against arbitrary behaviour could be based only on respect for the rule of law and for human dignity. The democratic principles to which India was so committed were currently being threatened by acts of terrorist violence which had resulted in thousands of victims in Punjab and in Jammu and Kashmir, where 2,600 Muslims had been murdered, as had innocent bystanders, political and community leaders, workers, members of the judiciary, intellectuals and journalists. Terrorism had driven 250,000 members of various religious communities, Hindus, Sikhs, Buddhists and Christians, and 50,000 Muslims from the Kashmir valley to other parts of India. In view of the magnitude of the problem, the Indian Government had been obliged to enact special laws for the protection of the rights of its citizens, such as the Terrorist and Disruptive Activities (Prevention) Act, to be reassessed every two years, and the Armed Forces (Special Powers) Act, enforceable only in designated "disturbed" areas. Such legislation must by no means be regarded as arbitrary decrees and their enforcement could be challenged in court. Moreover, the remedy of habeas corpus was available to all citizens. Accused persons could be placed in custody only on the order of a competent court, which must be confirmed within 30 days by an advisory board of three judges whose opinion was binding on the

State. In the event of a breach of procedural safeguards, detainees could be released by the High Courts or the Supreme Court. No impunity from prosecution was granted to law enforcement officials or members of the security forces who committed violations in the exercise of the powers conferred on them by those two Acts. In the State of Jammu and Kashmir alone, disciplinary action had been taken against 170 members of the army and the security forces and it might have serious implications for their career prospects. The security forces posted in Jammu and Kashmir had also been strictly instructed to eschew the excessive use of force or illegal measures.

19. The spectre of terrorism threatened the survival of every democratic civil society in the world. Pressure must be brought to bear on public opinion so that the world could mobilize to halt terrorist and subversive organizations. Although such responsibility lay primarily with the special rapporteurs, working groups and members of the Commission on Human Rights, it also fell to other human rights organizations and NGOs. Assessing the human rights performance of States was necessary to remind Governments of their obligations, but it practically amounted to condoning terrorist groups by neglecting their many more numerous victims, whose rights democratically elected governments had to defend. The post-cold war era offered an excellent opportunity to promote cooperation in the field of human rights. Rights could best be protected not by resort to violence and terrorism, but through cooperation, mutual understanding and confidence building. Human rights should not be used for sectarian purposes; they could truly be promoted only in an atmosphere of trust, understanding and friendship. India's commitment to the cause of human rights was not recent; it dated from the early years of its independence and was rooted in its freedom struggle. The Indian Government had always shown a spirit of openness and transparency and would continue to do so with regard to the situation in Jammu and Kashmir, which many journalists, foreign diplomats, legislators and tourists had been free to visit in 1993. The International Commission of Jurists had already visited Jammu and Kashmir and ICRC had been invited to do so as well.

20. At the World Conference on Human Rights, 170 countries had condemned terrorism and the Vienna Declaration called on the international community to take the necessary measures to strengthen cooperation in action to combat terrorism. If the objective of eliminating torture, arbitrary detention and disappearances and protecting the fundamental right to freedom of opinion and expression was to be fully achieved, account must also be taken of the human rights violations perpetrated by terrorists. The Commission should request the working groups or the special rapporteurs to study the consequences of terrorist methods. In his delegation's view, those mechanisms should carefully scrutinize the information they received to determine whether it was true, thus allowing Governments to carry out the necessary investigations, but also avoiding duplication with other Commission mechanisms. His Government was sincerely determined to establish a system for the prevention of human rights violations and for the punishment of offenders and would continue to cooperate with the Commission. His delegation endorsed the recommendation of the Sub-Commission on the appointment of a Special Rapporteur to assess the independence of judges and lawyers.

21. Mr. MALGINOV (Russian Federation) said that the matters considered under agenda item 10 were not only topical, but also related to the most fundamental

rights of the individual, namely, the right to liberty and security of person or, in other words, the right to life. Those were all facets of a single problem with which mankind had long grappled: striking an ideal balance among the powers of the State, the responsibilities of civil institutions and the rights of the individual. A country's democratic potential largely depended on that balance and on the maintenance of the rule of law. History had shown that, without such a balance, the slide into totalitarianism became inexorable. The question of the rights of persons subjected to any form of detention or imprisonment was especially relevant because no State was safe from arbitrariness in that regard, as shown by the documents and many reports prepared by NGOs. The Commission must therefore help States combat arbitrariness and establish safeguards, which assumed even greater importance during national emergencies.

22. Since the advent of democracy in Russia, efforts had been made to guarantee the rights of detainees and to eliminate certain unacceptable practices. In accordance with international standards, torture was prohibited by the Russian Constitution and that provision now had to be reflected in the legislation in force. The Russian Government would try to comply with all the relevant recommendations made in various Commission documents. Moreover, Russia was fulfilling its obligations under the Convention against Torture and was even considering the adoption of some of the provisions of the European Convention for the Prevention of Torture. Despite such progress, there was still a great deal to be done, especially with regard to law enforcement at the local level. The prison reform was also continuing, despite some difficulties caused by the shortage of staff and resources. Cases of abuse of power and ill-treatment of detainees, juveniles, minors in particular, continued to be reported. The practice of extracting confessions under duress or torture had not wholly disappeared, but efforts were constantly being made to put a stop to it. The country's leaders had understood that the time for promises had passed and that Russian society now expected firm measures to strengthen the legal safeguards of individuals; in that regard, they were counting on the assistance of the international community and of the Commission on Human Rights in particular.

23. In view of the many States where torture was still practised - as shown by all the reports submitted to the Commission - and the few that had acceded to the Convention against Torture, States must be made to understand that they had a moral responsibility both to take part in the activities of international monitoring mechanisms and to strengthen those mechanisms. In that connection, his delegation invited the Special Rapporteur on the question of torture, Mr. Nigel Rodley, to visit Russia in 1994 to see for himself how the relevant legislation was being implemented. The work being carried out by the Sub-Commission on the impunity of perpetrators of human rights violations should also be speeded up so that recommendations on ways of eliminating that phenomenon could be formulated rapidly and the necessary attention should be given to training programmes for the members of security forces in various regions as part of human rights advisory services and technical assistance.

24. He drew particular attention to non-respect for human rights in time of public emergency, which was a very topical problem, because, according to the report of Mr. Despouy on the question (E/CN.4/Sub.2/1993/23/Rev.1), states of emergency were in force in 85 States and territories. In 1993, states of

emergency had been decreed in Russia, the United Kingdom, the former Soviet Republic of the Caucasus, Turkey, Sri Lanka, Algeria, Burundi, Colombia, Peru and Egypt, not to mention States in the throes of civil war or subject to totalitarian regimes. The reasons for the declaration of a state of emergency varied greatly from country to country and it was always difficult to know how to handle human rights violations committed, for instance, in connection with action to combat terrorism in order to guarantee the security of the population or the territorial integrity of the country. Some cases were well known, but there had been reluctance to scrutinize or censor the State concerned for fear of fuelling the destructive forces at work there. Silence was no less dangerous, leading as it often did to even more serious violations of human rights. The solution was to require the Governments of those States to be transparent, cooperate with governmental and non-governmental organizations and punish the perpetrators of particularly cruel violations unwarranted by the general situation in the country. The problem had arisen with particular severity in late September 1993, when all the President's efforts to resolve the constitutional crisis by peaceful means had proven unsuccessful. The emergency measures then imposed to halt the swing toward totalitarianism had given rise to such abuses as illegal arrest, violence, deportation and the confiscation of property. Criminal proceedings had since been brought against officials of the Ministry of the Interior, who had been convicted of the violations in question. Those events had shown that states of emergency should be declared only in accordance with precisely defined standards, and for a limited period of time, and that emergency measures must correspond to a genuine threat and be imposed for the sole purpose of protecting the lives and interests of individuals, preserving democratic principles and maintaining peace and stability.

25. His delegation hoped that the Commission would adopt concrete, realistic decisions aimed at resolving the complex problems confronting States.

26. Mr. STEEL (United Kingdom) said that agenda item 10 deserved particular attention because respect for the rights and freedoms covered by that item was fundamental to the enjoyment of all the rights and freedoms set out in the Universal Declaration.

27. The eradication of torture must, without any doubt, be a priority issue for the entire international community. His delegation agreed with the conclusion by the Special Rapporteur on the question of torture, Mr. Nigel Rodley, in his report (E/CN.4/1994/31) that the elimination of torture was a matter of political will and that its persistence was a testimony to the failure of that will. It also supported the procedure for urgent appeals to Governments which the Special Rapporteur had used and encouraged him to continue to use it. Attaching as it did the highest importance to the right to freedom of opinion and expression which lay at the heart of individual liberty in a free and prosperous society, his delegation supported the establishment by the Commission of the post of Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the appointment to that post of Mr. Hussain, whose first report (E/CN.4/1994/33) it had read with great interest. It shared the concern he had expressed in paragraph 19 of the report about threats against professionals in the field of information, including journalists and writers. There was a close connection between freedom of expression and arbitrary

detention. Paragraph 37 of the report of the Working Group on Arbitrary Detention (E/CN.4/1994/27) noted that a large number of the cases of arbitrary detention submitted to it were related to the denial of the right to freedom of speech but it was clear that that widespread phenomenon had far broader implications and that the Working Group's mandate was therefore fully justified. It was disturbing that, in about half of those cases, the Governments concerned had not even replied to the Working Group's requests for information. The report (E/CN.4/1994/26) of the Working Group on Enforced or Involuntary Disappearances, which had carried out its task with great energy and skill, gave no cause for optimism because it clearly showed that the policy and practice of many States ran counter to the provisions of the Declaration on the Protection of All Persons from Enforced Disappearance, and that some of them still did not cooperate with the Working Group.

28. His delegation had been struck by three themes that were common to the reports submitted under agenda item 10. The first was the need for all Governments, and the international community as a whole to stamp out the granting of impunity to the perpetrators of human rights violations. It could not be said too often that there could be no realistic hope of curbing human rights abuses until those who committed them had been made to understand that, whatever their position or status, they were not above the law and would be called to account for their actions. That much was owed to their past and future victims. The willingness of Governments to take action of that kind was a measure of their genuine determination to protect human rights within their jurisdiction. The second point related to acts of violence committed by terrorist groups. His delegation shared the view of the Special Rapporteur on the question of torture that the Commission should simply regard those groups as criminal organizations, devoid of authority whatever. It also considered that the mandate of the Working Group on Arbitrary Detention should be confined to detentions ordered or practised by States because States were responsible under international law for promoting and ensuring respect for human rights and which regrettably violated that law. The third and final point related to the need for the Commission to take account, under agenda item 12, of all the evidence provided in the reports submitted under agenda item 10 because, in many cases, it was the best and clearest evidence of the human rights situation in the countries concerned and of the extent to which they were cooperating with the Commission. In deciding what measures should be taken, that was certainly information to be borne in mind.

29. Mr. RODRIGO (Sri Lanka), referring to agenda items 10 (a) and (c), said that the Government of Sri Lanka had always cooperated with the mechanisms of the Commission on Human Rights and had taken serious note of their concerns. That was reflected in the fact that the Working Group on Enforced or Involuntary Disappearance had twice visited Sri Lanka in 1991 and 1992, at the invitation of the Government, and the Special Rapporteur on extrajudicial, summary or arbitrary executions would be doing so in April.

30. His delegation was pleased to announce that the Government of Sri Lanka had acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and that the requisite legislation to give effect to Sri Lanka's obligations under the Convention had been drafted. The guarantees against torture already provided for under the Constitution of Sri Lanka would thus be brought up to international standards. The Government

of Sri Lanka continued to implement the recommendations of the Working Group on Enforced or Involuntary Disappearance, which clearly indicated, in its most recent report (E/CN.4/1994/26) that the number of disappearances in Sri Lanka had substantially declined over the last three years. That improvement was due to the positive steps taken by the Government, the assistance provided by friendly countries and various United Nations mechanisms and the constructive support of non-governmental organizations. Nevertheless, cases of disappearances still occurred, in large part as a result of the campaign of terrorism carried out by the Liberation Tigers of Tamil Eelam, whose activities went beyond Sri Lanka's territory. His Government was nevertheless determined to eradicate that phenomenon completely and, to that end, it had established a presidential commission to investigate incidents of disappearances after January 1991. A special unit had recently been established by the Ministry of Defence to deal with cases prior to that date. Unfortunately, it had quickly become evident that in the 1,272 cases reported by the Centre for Human Rights, only the name of the individual reported missing was known. The paucity of information made it nearly impossible to carry out a thorough investigation. The special unit had been able to determine that 195 persons on the Centre's list had disappeared as a result of terrorist activity and compensation had even been paid to their next of kin. In fact, there had always been a system of compensation and reparation. The Ministry of Rehabilitation, Reconstruction and Social Welfare had already granted compensation to more than 2,000 persons whose close relatives had been reported missing as a result of terrorist activities. The new special unit would bear that in mind during its consideration of the list of missing persons transmitted to it by the Centre for Human Rights and might also use information which had been provided by the families of missing persons for the purpose of obtaining death certificates.

31. He pointed out that the paragraphs of the report of the Working Group on Enforced or Involuntary Disappearance (E/CN.4/1994/26) relating to Sri Lanka were not entirely accurate. Contrary to what was stated in paragraph 439 (a), failure to report an arrest was an offence subject to the penalty provided for in the revised Regulation referred to. It was also not accurate to say, as it had been asserted in paragraph 439 (b), that provision had not been made for unofficial places of detention, since such places did not exist; according to Regulation 19 (8), detention in any other place other than a designated one was a punishable offence. It was, moreover, not only because of their violation of Emergency Regulation 23 that many young Tamils had been arrested in the conflict zones, as indicated in paragraph 440, but because they had been suspected of participating in terrorist activities. It should also be noted that an investigation was currently under way into the disappearance of 16 students from Embilipitiya referred to in paragraph 442 and that the evidence produced during those inquiries would be used to prosecute anyone suspected of involvement in that case. The investigation of the grave at Suriyakanda in the south of Sri Lanka was also continuing. With regard to the allegations made in paragraph 441 that a police officer named Udugampola was responsible for numerous disappearances and extrajudicial executions between 1988 and 1990, no credible evidence had been provided to substantiate such allegations. The case of 16 missing farmers, which was referred to in paragraph 444, was currently being investigated by the presidential commission on involuntary disappearances.

32. His delegation found it unfortunate that the thematic rapporteurs and working groups of the Commission often tended to place too much emphasis on human rights violations committed by the State and failed to mention those committed by terrorist groups. It therefore welcomed the General Assembly resolution entitled "Terrorism and human rights" which requested the Commission to take note of violations carried out by terrorists, and it urged the Commission to action along those lines.

33. Mr. RODRIGUEZ ALPIZAR (Costa Rica) said that, since torture was widespread in many countries, the international community must try to find new ways of eradicating that phenomenon, focused on prevention. To that end, the Commission had adopted resolution 1992/43 establishing the open-ended working group on the elaboration of a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. By the end of its second session, in which a very large number of country representatives, non-governmental organizations and experts in the field had taken part, the Working Group had already made significant progress in its consideration and adoption on first reading of the protocol in question. It was important to continue to support the Working Group's efforts so that it could continue to make progress at its third session; his delegation thus urged new member States of the Commission to become sponsors of the draft resolution on that question that it would be introducing, as it had done in earlier years. The protocol, the original text of which had been proposed by his delegation and was contained in document E/CN.4/1991/66, was of great significance because it provided, inter alia, for the establishment of a system of regular visits to detention centres for the purpose of preventing torture. In the report on its most recent session (E/CN.4/1994/25), the Working Group reviewed all the amendments which had been made to the text over the years. His delegation invited all delegations to continue to work together to eliminate the scourge of torture, which was an obstacle to peace.

34. Mr. ANGOL (Sudan) recalled that, during his statement before the Commission, the Minister for Foreign Affairs of the United Kingdom had rightly stressed the three basic principles underlying the promotion and protection of human rights: accountability, the rule of law and free exchange of knowledge. Yet, the application of those principles was unfortunately hindered by the fact that human rights issues were often used by certain countries to interfere in the internal affairs of other countries, and that only added to the growing cynicism of international public opinion about the real motives behind the western Power's interest in human rights issues.

35. Third world countries, in particular, were increasingly concerned by the way in which the United Nations and its competent bodies dealt with human rights questions. The Centre for Human Rights was run almost exclusively by Europeans, with token representation from Africa and Asia. The Centre's reports often reflected the political and cultural background of their authors, who frequently gave pride of place to information disseminated by non-governmental organizations and human rights organizations based in Europe. As a result, the Governments of the countries under investigation were less than eager to increase their cooperation with the Centre. The recruitment of staff for the Centre should be based on a more balanced and equitable geographical distribution and the Centre should also be provided with adequate financial and material resources to enable its staff to make more field visits

and establish close ties with the countries involved; that would be one way of loosening the grip of the European organizations which were frequently closely tied to European Governments and to western media.

36. A careful investigation was needed into the activities and sources of financing of many of those non-governmental organizations before credibility was given to the information they provided because they were often instruments of propaganda for certain policies or religions. That was the case, for example, of the World University Service, the International Organization for the Development of Freedom of Education, the International Fellowship of Reconciliation and the International Association for the Defence of Religious Liberty, which were constantly disregarding their consultative status with the Economic and Social Council by disseminating false information about Islam and Islamic societies. They were the first to introduce selectivity and bias into the human rights system and concentrated mainly on certain countries and peoples outside of the European sphere. Thus, on several occasions, a former politician speaking on behalf of a regional non-governmental organization had, during one of his statements before the Commission, violently attacked a particular country without making any reference whatsoever to violations of human rights committed in other parts of the region represented by his organization. The representative of the so-called International Fellowship of Reconciliation had also made vicious accusations about Islam and its followers on several occasions and that had served only to provoke conflict between the Islamic world and the western world and not, as the organization claimed, to bring about reconciliation. Unhesitating acceptance of the information furnished by many of those non-governmental organizations and deliberate disregard of the information provided by Governments, in particular those whose acts were expressly called into question, introduced an element of chaos and irresponsibility into the work and debates of the Commission and was in violation of its very purpose. It should be kept in mind that those non-governmental organizations often failed to respect the laws of the country in which they operated. That had been the case in Sudan, where some of those organizations had been asked to leave the country for that reason, and that had led them to make hostile comments about Sudan to the international media. In any event, his delegation hoped that the United Nations and its bodies would demonstrate a higher level of professionalism in the future by refraining from any act which might jeopardize their neutrality and by abiding strictly by the principle of non-interference in the affairs of its member States.

37. Thematic rapporteurs had also shown partiality in the way in which they handled replies of Governments to their requests for clarification concerning reports of human rights violations provided by various sources. In certain cases, they accepted the replies without reservation, reproducing them in full in their report and expressing their appreciation to the Government concerned. In other cases, they expressed doubts as to the veracity of the replies, reproducing only limited excerpts in the report and expressing mitigated appreciation to the Government in question. That was the case in particular of the Special Rapporteur on torture, Mr. Nigel Rodley, whose report (E/CN.4/1994/31) included detailed information on the detention and torture of several persons provided by opposition groups, but made only passing reference to the reply of the Government in question, thereby raising doubts about the reliability of its contents. In the section of his report (E/CN.4/1994/7) on

extrajudicial, summary or arbitrary executions, Mr. Bacre Waly N'diaye had made hasty generalizations and had even made serious accusations without any proof, particularly in paragraphs 560 and 565. Thematic rapporteurs ought to verify the accuracy of the information provided to them, grant more credibility to replies of the Governments involved and accept the invitations of those Governments to visit their country and judge the situation for themselves. The resources needed for such trips must be made available to the Centre for Human Rights so that there could be no reason to decline such invitations. In that connection, his delegation was of the view that the resources allocated to the Centre to provide technical assistance to member States which requested it were not being fully utilized. In fact, Sudan had to date not received a positive response from the Centre to its request for assistance, and that gave some idea of the extent of cooperation between the Centre and the Governments which dealt with it. It was to be hoped that the Centre would take the appropriate steps to rectify the situation.

38. Mr. SEGER (Observer for Switzerland) said that, after reading the reports submitted to the Commission under agenda item 10, he was obliged to conclude that, since the past year, there had been almost no change with regard to the problem of torture, arbitrary detention and forced disappearances. In general, the same countries were being singled out in that regard and United Nations mechanisms still did not have enough financial or human resources.

39. The report of the Special Rapporteur on torture, Mr. Nigel Rodley (E/CN.4/1994/7), showed in particular that torture were still a frequent and sometimes regular practice in several countries, including those which were parties to the United Nations Convention against Torture and even, in one case, the European Convention for the Prevention of Torture. It was true that torture was often used as part of action to combat terrorism, which could not be considered a legitimate means of resistance, but that did not change the fact that, if a State wished to avoid lowering itself to the same level as criminals, it could never use torture as a weapon against terrorism. The Working Group on the draft optional protocol to the Convention against Torture had nevertheless made significant progress at its second session and it was to be hoped that it would complete the first reading of the draft articles by the end of the current year. That would represent a first step towards the implementation of the Vienna Programme of Action, which provided for the speedy adoption of such an instrument of international law to ensure better protection for individuals deprived of their freedom.

40. Despite the adoption by the General Assembly in 1992 of the Declaration on the Protection of All Persons from Enforced Disappearance, that phenomenon continued to exist and many cases of disappearances had still not been settled. Switzerland thus joined the Working Group in its appeal to Governments to cooperate fully with it and endorsed the Working Group's proposal that a special mechanism should be set up to deal with cases of disappearances in the former Yugoslavia in view of the gravity of that particular situation there.

41. No progress had been made in stopping the practice of arbitrary detention, another form of psychological torture for detainees and their families. Governments too often took advantage of states of emergency to

arrest and detain citizens without charge or trial and used arbitrary detention to silence those who made use of their right to freedom of opinion and expression. It was therefore important to renew the mandate of the Working Group and enable it to use its competence as broadly as possible to examine situations on its own initiative. His delegation welcomed the decision of the Government of Viet Nam to invite the Working Group to visit its country and encouraged the Chinese authorities to accept the Group's request to visit China. It also joined in the appeal made by the Chairman of the Working Group on Arbitrary Detention to the authorities of Cuba, Indonesia and Zaire to agree to on-site visits.

42. Lastly, his delegation hoped that the Commission would be able to make a more positive evaluation of the situations considered under agenda item 10 at its fifty-first session, taking into account the implementation of the Vienna Declaration and Programme of Action.

43. Ms. SCHERER (Amnesty International) said that the thematic mechanisms were one of the most useful tools created by the Commission to put a stop to serious and persistent violations of human rights in many countries of the world. Thus, in the case of China, her organization had been able to provide the special rapporteurs on torture, extrajudicial, summary or arbitrary executions and religious intolerance and the Working Group on Arbitrary Detention with information on the situation of hundreds of persons, including political dissidents and members of ethnic and religious groups, arbitrarily arrested for having peacefully exercised their fundamental rights and detained without charge or trial or sentenced to long prison terms or even to death. Between January and November 1993, 1,250 persons condemned to death had been executed. Her organization thus urged the Chinese Government to cooperate with those mechanisms and authorize the thematic rapporteurs to visit China.

44. In Peru, at least 2,000 persons had been arbitrarily arrested since the introduction of anti-terrorism legislation in May 1992 and were being detained without being able to exercise their right to file a habeas corpus petition. Hundreds of detainees had been tortured and their confessions had been used against them in cases heard in camera before civilian or military courts. Following his visit to Peru, the Special Rapporteur on extrajudicial, summary or arbitrary executions had confirmed the prevalence of extrajudicial executions in recent years. Amnesty International called on the Government of Peru to invite the Working Group on Arbitrary Detention and the Special Rapporteur on the question of torture to visit Peru to investigate those violations.

45. In other cases, the work of the thematic rapporteurs served to inform the Commission more fully on situations considered elsewhere on its agenda, such as that of Zaire, where arbitrary detention, torture, ill-treatment and disappearances had been commonplace since 1990. As the Government of Zaire had failed to investigate those violations, the Commission should call on it to invite the appropriate thematic rapporteurs to visit the country. But the work of the rapporteurs could be effective only if Governments cooperated fully with them and implemented their recommendations. In the case of Sri Lanka, the Government's invitation to the Working Group on Enforced or Involuntary Disappearances to visit in 1991 and 1992 was to be welcomed. However, many of the Working Group's recommendations had yet to be

implemented. In Amnesty International's view, it would be useful to create a new sub-item under agenda item 10 to monitor Governments' progress towards implementing the recommendations of the thematic rapporteurs. It was also important for the Commission to ensure that all Governments responded to requests for information from the Commission's special rapporteurs and working groups. In its latest report, the latter had identified those Governments which had not replied, as well as those, notably Indonesia, which had not invited them to undertake on-site visits.

46. The international community should also take urgent measures to put an end to human rights violations against women. That need had been recognized by the Vienna Declaration and Programme of Action. Amnesty International supported the proposal to appoint a special rapporteur on violence against women, who should coordinate her work with that of the Commission on the Status of Women, particularly in connection with the preparations for the Fourth United Nations World Conference on Women, to be held in Beijing (China) in 1995. Moreover, the Commission's special rapporteurs should take greater account of the particular characteristics of violations specifically directed against women and bear them in mind when drafting their reports. On-site visits should include delegates with expertise in women's issues and use female interpreters to facilitate the collection of sensitive information from women. The Commission should also ensure that the Special Rapporteur on violence against women as well as all other mechanisms had adequate financial and human resources to carry out the tasks with which they were entrusted. The Centre for Human Rights must also be given the resources to ensure proper coordination between the mechanisms, whose numbers continued to grow.

47. The CHAIRMAN invited delegations that so desired to exercise their right of reply, in accordance with rule 45 of the rules of procedure.

48. Mr. KAKAKHEL (Pakistan), replying to the representatives of India and the Indian Institute for Non-Aligned Studies, an organization which had been created and was 100 per cent administered and financed by the Indian Government and which, in its statements before the Commission, had accused Pakistan of responsibility for the suffering of non-Muslim Kashmiris in Jammu and Kashmir, said that the majority of the latter had left Kashmir because they had been urged to do so by the Governor of that State in the beginning of the 1990s. During the campaign of repression that had followed the Kashmiri uprising, the Governor had advised non-Muslims to leave, providing them with means of transport and promising to ensure their subsistence in exile. Despite all the efforts made, it had not been possible to crush the Kashmiri rebellion, which had, on the contrary, grown stronger, but, given the terrorist violence, it was clear that the exiles could not return to their country.

49. There was nothing religious about the Kashmiris' struggle. It had not originated in Islamic fundamentalism, as some claimed in order to explain the human rights violations committed in Kashmir. The allegations that Pakistan was providing the Kashmiris with material assistance were totally unfounded and neither India nor the NGO in question had been able to produce any such proof. If the allegations were true, why would India refuse Pakistan's proposal to strengthen the United Nations military observation forces based in

Kashmir on either side of the frontier line or to set up a new international monitoring mechanism to ensure that no external assistance was given to the Kashmiri freedom fighters.

50. In order to improve the lot of the Kashmiris, whether or not they were Muslims, it was important first and foremost to ascertain exactly what their situation was and the Commission should therefore send a mission to investigate on site. It would then no longer need to rely on the Pakistani or Indian delegations or on NGOs of doubtful origins to find out exactly what was happening in Kashmir.

51. Mr. AL DOURI (Observer for Iraq) said that the accusations levelled against Iraq by France-Libertés: Fondation Danielle Mitterrand were nothing new and merely reflected the well-known political objectives of that organization. However, his delegation would like to draw the Commission's attention to the fact that that organization, which called itself "humanitarian" and claimed to defend human rights, was in favour of maintaining the economic blockade which had been imposed on Iraq more than three years previously and whose human consequences had been dramatic because the embargo was the reason for the untold suffering of the Iraqi population. By acting in that way, that so-called humanitarian organization was participating in the crime of genocide committed against an entire people in the name of human rights. In reality, it cared little about human rights; it was merely an instrument of international politics like many other non-governmental organizations which participated in the work of the Commission and sought to promote political interests disguised as human rights.

52. Mr. GAFO ACEVEDO (Observer for Spain) informed the representative of the World Organization against Torture that Spain was party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and had recognized the competence of the Committee against Torture to receive and consider communications from individuals, as provided for in article 22 of that instrument, that it was also a party to the European Convention for the Prevention of Torture and appreciated the work of the European Committee set up to monitor its implementation. It also collaborated regularly with the Special Rapporteur on torture. His delegation reaffirmed that any cases of torture which might have occurred in Spain were isolated incidents and that those responsible had been brought to justice and punished accordingly or would be. An in-depth investigation had been undertaken on the incidents referred to by the representative of the World Organization against Torture.

53. Although Spanish anti-terrorist legislation did in fact make provision for exceptional measures in respect of detention, such measures were fully consistent with the international commitments entered into by Spain in that area. It must also be borne in mind that all detainees suspected of terrorist activities had received instructions to claim that they had been tortured, whether or not that was true. Action to combat torture was a serious matter and it must therefore be ensured that it was not used by those who themselves disregarded the right to life and human dignity.

54. Mr. CHANDRA (India), commenting briefly on the comments by the representative of Pakistan, said that the latter seemed to be better informed

than he was on the financial situation of the International Institute of Non-Aligned Studies. All he knew himself was that it was a non-governmental organization in consultative status with the Economic and Social Council, and that was why it could take the floor in the Commission. The second point was that no one could possibly believe that the Kashmiris who had left their country had done so at someone's request, as the representative of Pakistan had asserted, in exchange for a subsistence allowance. They had left Kashmir because of the activities being carried out by the terrorists in that State with outside support. The Kashmiris would return to their country as soon as the terrorism had stopped.

55. His delegation had been greatly disappointed by the allegations made at the preceding meeting by the Secretary-General of the Organization of the Islamic Conference (OIC), firstly because they were totally unfounded; secondly, because the current unrest in the State of Jammu and Kashmir was the result of external involvement in terrorist activities conducted in the region; and, thirdly, because OIC was criticizing a country where many Muslims lived and enjoyed the same rights as all other citizens.

56. The proposal of OIC mediation to settle the question of Jammu and Kashmir was unacceptable because that State was an integral part of India. Moreover, the Simla Agreement was a tried and tested negotiation framework. Jammu and Kashmir was open to all who wished to visit it; in the past year, it had been visited by some 100 foreign journalists, diplomats, parliamentarians and tourists, as well as thousands of Indians. In November 1993, the International Commission of Jurists had been permitted to visit, as had the International Committee of the Red Cross (ICRC). Ambassadors from the member States of the European Union had just visited Jammu and Kashmir and a similar invitation had been extended to the representatives of OIC member States.

57. The facts about the situation in Jammu and Kashmir were very clear. That State was the target of a campaign of unparalleled terrorist violence aimed at destroying the democratic system that had been in place there for many years. It must be borne in mind that the Indian security forces, and not the terrorists, were seeking to protect human rights and democracy in Jammu and Kashmir and that they were working under very difficult circumstances because the terrorists they faced were equipped with ultra-modern equipment and arms. Nevertheless, they had invariably discharged their duties with the utmost restraint. The Secretary-General of OIC was concerned for the security of the Muslim community in Jammu and Kashmir, but India was even more so because they were, above all, Indians living in India, a secular State in which all religions were respected and in which the numerous members of the Muslim community were treated on an equal footing with other citizens and played an active role in the life of the country.

58. Mr. DON NANJIRA (Kenya) said that he categorically rejected the allegations by the Organization "Article XIX: The International Centre Against Censorship" that his Government was partly responsible for the political violence in Kenya; those assertions were totally unfounded. The facts of the matter were quite different. Prior to and following the general elections of 19 December 1992, there had in fact been clashes in certain parts of the country between the supporters of opposing political parties, instigated by elements whose sole objective had been to prevent the transition

to a multiparty democratic system and to cast doubt on the Government's legitimacy. That was why two temporary security zones had been created around the areas affected by the conflict. Those measures had been taken to guarantee the life and property of the inhabitants of those regions, to restore public order, to facilitate the Government's efforts to arrest, try and punish those responsible for the violence and to promote operations to resettle all those who had left their homes. Thanks to those indispensable measures, the situation had returned to normal in the affected areas. Those were the facts.

59. Mr. CHOEGYAL (China) cautioned the Commission about believing the deceitful assertions formulated by a non-governmental organization concerning the situation of human rights in Tibet. Clearly, the goal of that organization was not to defend human rights, but to divide China. A Tibetan himself, he had witnessed the historic changes that had taken place in Tibet over the past 10 years. Since the peaceful liberation of Tibet in 1959, the Tibetans' economic and social living conditions had changed profoundly. Much progress had been made, while customs, traditions and freedom of religion were fully respected. The central Government had introduced a number of policies in favour of Tibet and enjoyed the full support of the Tibetan people. It was impossible to refute all the lies spread by the representative of that NGO, but many persons had had the opportunity to see the situation for themselves. In 1993, in addition to 30,000 foreign tourists, parliamentarians, Government officials and journalists had been able to visit Tibetan cities, villages, schools, factories and temples, meet with all segments of the population and witness the progress that had been made in the development of Tibet.

60. His delegation was convinced that the international community would not allow itself to be deceived by those lies, which could not erase the achievements of the Chinese Government, that had been making every effort to promote the human rights of all Chinese, including Tibetans.

61. Mrs. FERRIOL ECHEVARRIA (Cuba), replying to the observer for Switzerland who had mentioned Cuba in his statement, said that no one had the right to ask a State to invite anyone to come to its territory because that decision was incumbent on that sovereign State and no one else. She recalled, however, that, in 1988, the Government of Cuba had invited not only a working group of the Commission, but also a mission of the Commission to visit Cuba and that the report of that mission, which had in fact taken place, had been considered in public by the Commission in 1989. In her delegation's view, it was regrettable that the Chairman/Rapporteur of the Working Group on Arbitrary Detention, who had made an appeal to the Cuban authorities, had failed to stress the consistent and systematic cooperation of the Cuban Government, which had replied to all requests for information addressed to it by the Working Group. It would be useful to know whether every State in which the human rights situation gave cause for concern was asked to receive missions from the Commission. It might also be asked whether Switzerland was willing to receive a mission to investigate the resurgence of xenophobia and racism directed against migrant workers from the third world or the traffic in children for the purpose of the sale of organs, child prostitution and pornography involving children, all of which existed in that country.

The meeting rose at 10.05 p.m.